United Nations A/62/206

General Assembly

Distr.: General
3 August 2007

Original: English

Sixty-second session
Item 87 of the provisional agenda*
Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions

Report of the Secretary-General

Summary

The present report has been submitted in compliance with paragraph 16 of General Assembly resolution 61/38. It highlights arrangements in the Secretariat related to assistance to third States affected by the application of sanctions; the operational changes that have occurred in the light of the shift in focus in the procedures and working methods of the Security Council and its sanctions committees towards targeted sanctions; and recent developments concerning the activities of the Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions.

* A/62/150.

07-45164 (E) 300807

I. Introduction

1. In its resolution 61/38, the General Assembly, inter alia, requested the Secretary-General to submit a report to the Assembly at its sixty-second session on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions. The present report has been prepared in compliance with that request.

II. Measures for further improvement of the procedures and working methods of the Security Council and its sanctions committees related to assistance to third States affected by the application of sanctions

2. As noted in the previous report of the Secretary-General (A/61/304), the Council agreed, in a note by the President of the Council (S/2005/841), to extend the mandate of its Informal Working Group on General Issues of Sanctions until 31 December 2006 with the task of developing general recommendations on how to improve the effectiveness of United Nations sanctions. In the same note, the President of the Council observed that the Working Group would address issues such as the assessment of the unintended impact of sanctions and ways to assist affected untargeted States.

3. During the period under review, by a letter dated 18 December 2006, the Chairman of the Working Group transmitted the Working Group's report to the Security Council (see S/2006/997, annex). Several of the recommendations and best practices contained in that report related to improved sanctions design and monitoring; however, the report did not contain any recommendations that explicitly referred to ways to assist untargeted States affected by the unintended impact of sanctions. By its resolution 1732 (2006), the Security Council decided that the Working Group had fulfilled its mandate as contained in document S/2005/841, and took note with interest of the best practices and methods contained in the Working Group's report and requested its subsidiary bodies to take note as well.

4. During the period under review, and in keeping with the Security Council's shift from comprehensive economic sanctions to targeted sanctions, there were no pre-assessment reports or ongoing assessment reports concerning the likely or actual unintended impact of sanctions on third States.

5. Some reports mandated by the Security Council touched upon the socio-economic and humanitarian impact of sanctions in the target States (see S/2006/976 and S/2007/340 in connection with Liberia; and S/2007/68 in connection with the Democratic Republic of the Congo). Following the expiry on 20 June 2006 of the timber sanctions imposed on Liberia and the termination on 27 April 2007 of the diamond sanctions imposed on that country, in establishing a new Panel of Experts on Liberia the Security Council did not include in that Panel's mandate any assessment of the humanitarian and socio-economic impact of the Council's remaining measures (see resolution 1760 (2007)).

6. In the period under review, and again in keeping with the Security Council's shift from comprehensive economic sanctions to targeted sanctions, no sanctions

committees were approached by Member States concerning special economic problems arising from the implementation of sanctions.

7. In every case in which the Security Council has decided that States shall freeze the assets owned or controlled by designated individuals and entities, the Council has also adopted exceptions by which States can signal to the relevant sanctions committee their intention to authorize access to frozen funds for a variety of basic and extraordinary expenses.[1] Such expenses can include, inter alia, payment for taxes, insurance premiums and public utility charges, or for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources.

8. Furthermore, in paragraph 15 of its resolution 1737 (2006), the Security Council decided that the assets freeze imposed by the same resolution would not prevent a designated person or entity from making payment due under a contract entered into prior to the listing of such a person or entity, provided that the conditions contained in subparagraphs 15 (a) and 15 (b) had been met, and after notification by the relevant States to the Committee established pursuant to resolution 1737 (2006) of the intention to make or receive such payments or to authorize, where appropriate, the unfreezing of funds, other financial assets or economic resources for that purpose, 10 working days prior to such authorization.

9. On 21 June 2007, in his second 90-day report to the Security Council, prepared in accordance with paragraph 18 (h) of resolution 1737 (2006), the Chairman of the Committee stated that, pursuant to paragraph 15, which did not require a Committee decision, the Committee had received 10 notifications of the receipt of payment or the unfreezing of assets in connection with contracts entered into prior to the listing of certain entities (see S/PV.5702). Thus the provisions contained in paragraph 15 of Security Council resolution 1737 (2006), as well as the exceptions to the assets freeze for basic and extraordinary expenses,[1] can help to mitigate economic burdens on the targeted individuals arising from the implementation of Security Council assets freezes.

III. Recent developments related to the role of the General Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions

10. Pursuant to paragraph 7 of General Assembly resolution 59/45, the Assembly and the Economic and Social Council have continued to play their respective roles in the area of assistance to third States affected by the application of sanctions.[2]

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[1] See Council resolutions 1452 (2002), 1532 (2004), 1572 (2004), 1591 (2005), 1596 (2005), 1718 (2006) and 1737 (2006).

[2] During the period under review, there were no developments in the Committee for Programme and Coordination in the area of assistance to third States affected by the application of sanctions.

A. General Assembly

11. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met from 7 to 15 February 2007. Chapter III.A of the report of the Special Committee contains a summary of the discussions on the question of the implementation of the Charter provisions related to assistance to third States affected by sanctions.[3]

B. Economic and Social Council

12. Pursuant to its decision 2000/32, the Economic and Social Council decided to include, in the general segment of the agenda of its substantive session of 2007, sub-item 13 (j) entitled "Assistance to third States affected by the application of sanctions". No advance documentation was requested. The Council considered the matter but took no action under that sub-item.

IV. Arrangements in the Secretariat related to assistance to third States affected by the application of sanctions

13. In accordance with the relevant resolutions of the General Assembly,[4] the competent units within the Secretariat have maintained their capacity to collate and coordinate information about international assistance available to third States affected by the implementation of sanctions. However, recent innovations in the design and implementation of sanctions regimes have led to the increased application of targeted sanctions rather than comprehensive sanctions. Modifications in the nature of sanctions have implications for the work that the Department of Economic and Social Affairs of the Secretariat was asked to carry out in this area, namely, the development of a possible methodology for assessing the adverse consequences of sanctions actually incurred by third States and the search for practical and innovative measures of assistance to the affected third States.

14. The need to explore practical and innovative measures of assistance to the affected third States has been reduced considerably because targeted sanctions have led to significant reductions in unintended economic consequences for third States. Thus, appraisals of adverse consequences of sanctions actually incurred by third States have been replaced by detailed case-by-case assessments of the effectiveness of targeted sanctions and their adverse impact on innocent civilians in target and non-target States. As noted in paragraph 6 above, there has not been an appeal for remedy and relief of economic problems caused by sanctions under the provisions of Article 50 of the Charter since 2003.

15. In years past, there was frequent resort to comprehensive sanctions. The basic methodological approach to monitoring and assessing the impact of sanctions on third States was first developed in 1996, as described in the report of the Secretary-General (A/51/317, paras. 16-34). Those procedures were further refined and updated in 1997 with technical input from the International Monetary Fund, the

[3] See *Official Records of the General Assembly, Sixty-second Session, Supplement No. 33* (A/62/33).

[4] See resolutions 50/51, 51/208, 52/162, 53/107, 54/107, 55/157, 56/87, 57/25, 58/80 and 59/45.

World Bank and the United Nations Conference on Trade and Development, as outlined in the report of the Secretary-General (A/52/308, paras. 6-12).

16. The economic impact of sanctions on third States was monitored and measured primarily through changes in the various channels that linked targeted and non-targeted States in commercial and related transactions. Although it was recognized that no uniform methodology could capture the impact of sanctions in all circumstances, economic losses of third States were measured or estimated on a case-by-case basis as disruptions in international trade and financial flows, lost opportunities for investment and other commercial activities and adverse impacts on the country's gross domestic product and other macroeconomic variables.

17. An ad hoc expert group meeting convened in 1998 by the Department of Economic and Social Affairs introduced several new techniques to improve impact-assessment methods. The recommendations of the expert group contained in the report of the Secretary-General (A/53/312, paras. 6-57) expanded the range of analytical methods that could be used to monitor and assess the impact of sanctions. In addition to focusing on economic losses, the improved methodology made provision for estimates of the social costs of sanctions, which are measured in observed deteriorations in health, education and other aspects of social development in target and non-target countries.

18. Sanctions monitoring activities under targeted sanctions regimes differ from the arrangements put in place in the Secretariat in 1996, as described in the report of the Secretary-General (A/51/317, paras. 4-11) as well as in his reports of 1997 and 2002 (A/52/308, para. 5, and A/57/165, para. 9), to monitor comprehensive sanctions. Although the existing arrangements continue to apply, they do not reflect the changes that have occurred to monitor targeted sanctions.

19. Targeted sanctions range from freezes on financial assets of individuals or groups in the target country, travel bans imposed on individuals, selective restrictions on international trade and other commercial transactions, particularly trade in arms and military hardware, and any other restrictions deemed by the Security Council as being likely to produce the desired effect. Independent experts now monitor the implementation of sanctions. The experts are selected for their knowledge, skills and experience. Assessments are conducted through field missions to the target countries and regions and through other appropriate investigative approaches. The reports and recommendations of the expert groups are transmitted to the Security Council through its sanctions committees.

20. The Department of Economic and Social Affairs could be called upon to complement or support the work of expert groups and sanctions committees in monitoring the impact and effectiveness of targeted sanctions. However, the present Secretariat arrangements are based on existing resources at the time of implementation. Significant changes in those arrangements would require new or revised legislative authorization and adequate budgetary resources.